

**IN THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS
STATE OF MISSOURI**

STATE OF MISSOURI, ex rel. JEREMIAH W.)	
(JAY) NIXON, ATTORNEY GENERAL,)	
)	
Plaintiff,)	
)	
v.)	No. 004-1773A
)	Div. 2
MCI WORLDCOM Communications, Inc.,)	
)	
Defendant.)	

CONSENT JUDGMENT

The Plaintiff, State of Missouri, at the relation of its Attorney General, Jeremiah W.(Jay) Nixon ("Plaintiff"), by and through his assistant, Paul M. Rauschenbach, and defendant, MCI WorldCom Communications, Inc. ("MCI WorldCom"), by and through counsel, state the following:

WHEREAS, on or about July 20, 2000 Plaintiff filed its Petition for Injunctive Relief, Civil Penalties, Restitution and Other Relief against MCI WorldCom in the Circuit Court of the City of St. Louis, Missouri (the "Action"), Cause No. 004-1773, alleging that MCI WorldCom had engaged in certain advertising and solicitation practices in violation of Mo. Rev. Stat. § 407.020¹; and

WHEREAS, MCI WorldCom denies all factual allegations, and legal and equitable claims asserted in the Action;

WHEREAS, during the period January 1, 1998 until October, 2001, MCI WorldCom has voluntarily reimbursed 4.3 million dollars to Missouri consumers to resolve customer service issues; and

WHEREAS, MCI WorldCom and Plaintiff have executed a written Settlement Agreement and Release because they wish to avoid the necessity, expense, and inconvenience of further litigation and to

¹ All references to statutes are to Missouri Revised Statutes, Cum. Supp. 1998, unless otherwise stated.

resolve and settle all claims and disputes between them arising out of, or in any way related to, the Action;
and

WHEREAS, the Plaintiff has authority under Chapter 407 of the Missouri Revised Statutes to
obtain a consent decree in this Action;

NOW, THEREFORE, by the signatures affixed below, the parties agree to entry of a Consent
Judgment on the following terms:

INJUNCTION REGARDING ADVERTISING

A. Definitions

1. A statement is "clear and conspicuous" if it is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner. The audio disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for a consumer to read and comprehend it. In a print advertisement or promotional material directed to consumers, the disclosure shall be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, in print that contrasts with the background against which it appears.

- a. There shall be a rebuttable presumption that the disclosures required by Paragraph 6 of this Consent Judgment are clear and conspicuous if, in addition to the foregoing, such disclosures comply with the following:

i. in an advertisement communicated through an electronic medium (*e.g.*, television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided however*, that in any advertisement presented through a solely visual method of delivery or a solely audio method of delivery, the disclosure may be made through the same means in which the advertisement is presented.

b. Disclosure pursuant to Paragraph 1(a)(i) creates rebuttable presumption that the disclosures required by Paragraph 6 of this Consent Judgment are clear and conspicuous, and is not a requirement under this Consent Judgment.

2. "Taxes" means the amounts that MCI WorldCom is required by law to collect directly from phone service consumers. This term does not include fees charged by MCI WorldCom to consumers that are based, directly or indirectly, on government imposed costs of doing business, such as the carrier access fee and the federal universal service fee.

3. "Long distance service" means dial "1" residential voice toll service and does not include local exchange service or wireless service. The terms of Paragraph 1 through 14 of this Consent Judgment apply to long distance service, as defined herein.

4. "Mandatory additional fees" means recurring charges and usage charges (including, but not limited to, any required minimum amount of toll charges, monthly service fee charges, carrier access fee and federal universal service fee) that a residential consumer must incur to use the long distance calling plan, but does not include taxes.

B. Representations Concerning Rate

5. MCI WorldCom shall not misrepresent, in any manner, directly or by implication, the rate of its long distance service.

6. MCI WorldCom shall not represent in advertisements the rate of, or the rate of any portion of, any of its long distance service (including, but not limited to, per minute rate claims) unless MCI WorldCom discloses clearly and conspicuously the name and amount of all mandatory additional fees, except for the federal universal service fee, either itemized or in total, subject to subparagraph a. of paragraph 8.

7. MCI WorldCom shall disclose clearly and conspicuously the existence of the federal universal service fee.

C. Representations Concerning Limitations on Rate

8. MCI WorldCom shall not represent in advertisements the rate or the rate of any portion of its long distance service unless it discloses clearly and conspicuously all other material terms and conditions (excluding those set out in paragraphs 6 and 7 of this Consent Judgment), including (if applicable) but not limited to:

- a. that in-state rates may be higher and that additional in-state fees may apply;
- b. where the rates apply, e.g., state-to-state or in-state;
- c. when the rates apply, e.g., time or day restrictions;
- d. in the case of a temporary promotion, the date the temporary promotion will expire;

- e. the billing method a consumer is required to utilize, if different from the consumer's current billing method, in order to obtain the rate;
 - f. if only one rate component of the calling plan is represented, and the consumer must purchase the complete calling plan, the fact that other rate components of the plan may be higher;
 - g. any requirement that consumers subscribe over the Internet; and
 - h. other services that must be purchased in order to obtain the rate.
9. MCI WorldCom shall not misrepresent the times or days during which its stated rate is available.

D. Representations Concerning Rate Comparisons

10. MCI WorldCom shall not misrepresent, in any manner, directly or by implication, the basis of any rate comparison or savings claim.
11. MCI WorldCom shall disclose clearly and conspicuously the basis of any rate comparison or savings claim by naming the competitor's product or service to which the comparison is made.
12. MCI WorldCom shall not compare its rate with the rate at which another seller is offering any product or service unless both of the following are satisfied:
- a. the other seller's product or service is currently being provided at the represented higher comparative rate; and
 - b. MCI WorldCom has not represented, expressly or by implication, that MCI WorldCom's long distance service is comparable to the other seller's product or service, unless such is the case. The mere presentation of the rate of another

seller's product or service does not necessarily imply that the other seller's product or service is comparable to the advertised long distance service.

13. Where required by state law, MCI WorldCom shall not represent, directly or by implication, that its long distance service is being offered at a range of rates or at a range of percentage or fractional discounts (e.g., "Save up to 50%") unless the highest rate or lowest discount in the range is disclosed clearly and conspicuously.

14. If MCI WorldCom uses the representation "basic rate" or other similar term to make a rate comparison, MCI WorldCom shall disclose clearly and conspicuously that the basic rate is a non-discounted rate, if such is the case.

OTHER PROVISIONS

15. **Contribution to Merchandising Practices Revolving Fund.** No later than thirty (30) days from February 21, 2002, the date MCI WorldCom signed the aforementioned Settlement Agreement and Release, (the "Effective Date"), MCI WorldCom shall make a voluntary contribution of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) to the Missouri Merchandising Practices Revolving Fund for investigative costs Plaintiff incurred in connection with the Action and recoverable under Chapter 407 of the Missouri Revised Statutes.

16. **Resolution of Unresolved Consumer Complaints Made from June 1, 1997 through the Effective Date:** Unless otherwise provided in this Consent Judgment, MCI WorldCom shall within one hundred fifty (150) days of the Effective Date (the "150 day period") undertake in good faith to assess and resolve, to the extent it has not already done so, all complaints made during the period June 1, 1997 through the Effective Date, of which it has notice or will receive notice pursuant to this

Consent Judgment, regarding MCI WorldCom, asserted by Missouri residents or businesses and submitted to the Plaintiff, the Missouri Public Service Commission, any other agency or department of the State of Missouri, the Better Business Bureau, and/or MCI WorldCom, and which are related to the allegations contained in the Action. MCI WorldCom will, within 30 days of the Effective Date, provide the name and address of each Missouri resident or business who has complained to MCI WorldCom during the period June 1, 1997 through the Effective Date, and whose complaint remains unresolved. Within 30 days of the Effective Date, MCI WorldCom shall also produce a description of the resident or business's unresolved complaint to the extent it is available to MCI WorldCom. For all complaints Plaintiff desires to have resolved under this Consent Judgment, it will, within 45 days of the Effective Date, place each complaint subject to this paragraph into one of the three categories described below, notify MCI WorldCom into which category each complaint has been placed and, to the extent it has not already done so, provide any other information in Plaintiff's possession at the time the complaint is disclosed, related to the complaint to aid MCI WorldCom in its effort to research effectively and resolve each complaint in accordance with this Agreement. In evaluating and resolving the complaints, MCI WorldCom will, at a minimum, satisfy the resolution criteria set forth below for each category. The 150 day period commences upon MCI WorldCom's receipt of the complaints and the other related information described in the preceding sentence.

Category 1: Complaints that MCI WorldCom charged for telephone services which the Missouri resident or business claims it did not receive or order or request.

Resolution Criteria for Category 1: Within the 150 day period, MCI WorldCom will reimburse the Missouri resident or business for the total amount of any charges for the telephone services which the Missouri resident or business claims it did not receive or order or request unless MCI

WorldCom has substantial evidence that establishes the Missouri resident or business's claim is fraudulent or without any basis in fact.

Category 2: Complaints that MCI WorldCom charged a rate or imposed fees for telephone services that were different from those MCI WorldCom represented that the Missouri resident or business would be charged.

Resolution Criteria for Category 2: Within the 150 day period, MCI WorldCom will reimburse each Missouri resident or business (as identified by the Plaintiff) for the amount of any rate or fee for their telephone service that was higher than MCI WorldCom represented. More specifically, MCI WorldCom will calculate and reimburse to the appropriate Missouri resident or business the difference between the amount the Missouri resident or business paid for the disputed telephone usage and the amount the Missouri resident or consumer would have been charged if the amount charged was as MCI WorldCom represented.

Category 3: Complaints that MCI WorldCom switched the Missouri resident or business from another long distance carrier to MCI WorldCom without the requisite authorization.

Resolution Criteria for Category 3: Within the 150 day period, MCI WorldCom will: (1) reimburse the Missouri resident or business for the cost of switching back to the long distance carrier the Missouri resident or business had before the alleged unauthorized switch; (2) fully comply with the governing rules promulgated by the Federal Communications Commission; and (3) issue a 100% credit or refund for the first 30 days of usage and a 50% credit or refund for all calls between days 31-90 days of usage, after the alleged unauthorized switch of service.

17. Not later than forty-five days from the "Effective Date", MCI WorldCom shall pay to the State of Missouri the sum of ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000.00) which the Plaintiff will use to resolve those claims against MCI WorldCom submitted to it

by Missouri residents or businesses within forty-five days after the Effective date. Any portion of the ONE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$175,000.00) not used for that purpose within the specified time period shall be paid into the State of Missouri's Merchandising Practices Revolving Fund.

18. **Resolution of Claims Asserted After the Effective Date.** Following the Effective Date, the Plaintiff will publish notice of this Agreement in the manner it deems appropriate informing Missouri consumers that they have forty-five days from the Effective Date to file with the Plaintiff any complaints against MCI WorldCom arising out of, or related to, facts that allegedly occurred from September 1, 1999 through the Effective Date.

For complaints filed by Missouri residents or businesses more than forty-five days after the Effective Date, either with MCI WorldCom, or with Plaintiff that Plaintiff then forwards to MCI WorldCom, MCI WorldCom will respond to each such complaint within fourteen days of receipt and will endeavor in good faith to resolve each complaint within forty-five days of receipt. These provisions in this paragraph in no way restricts Plaintiff's right to take action against MCI WorldCom for acts or omissions occurring after the Effective Date.

19. **No Prejudice in Any Future Proceedings.** Except as is expressly set forth in this Consent Judgment, the conduct of the parties is not otherwise restricted by this Consent Judgment.

20. **Amendment to Governing Regulation.** In the event that any applicable state or federal law or regulation is amended, or in the event that any other law or regulation is enacted in a manner which would render compliance with any term of this Consent Judgment a violation of such law or regulation, MCI WorldCom's compliance with such amended or newly enacted law or regulation will

constitute compliance with this Consent Judgment. The remainder of the terms and conditions of this Consent Judgment shall not be affected thereby.

21. **Scope of Agreement.** MCI WorldCom understands and agrees that this Consent Judgment applies to MCI WorldCom and its principals, officers, directors, agents, employees, representatives, parents, subsidiaries, predecessors, affiliates, successors and assigns, jointly and severally, and to any other entity through which MCI WorldCom conducts the activities that are the subject of this Consent Judgment.

22. **Public Filing.** MCI WorldCom understands and agrees that this Consent Judgment will be filed with the Circuit Court for the City of St. Louis, Missouri, upon its approval, and that if entered that Court will retain jurisdiction for the purpose of enabling any of the Parties to apply to that Court for any other such further orders and directions as may be necessary and appropriate for the enforcement of, modification of, compliance with or relief from any of the provisions of this Consent Judgment or the Settlement Agreement or Release.

23. **Changes:** No changes shall be made to this Consent Judgment unless made in writing, signed by all parties, and approved by, and filed with the Court.

24. **Product of Both Parties' Draftsmanship.** The Parties cooperated in the drafting of this Consent Judgment. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Consent Judgment.

25. **Severability.** If any part or provision of this Consent Judgment is finally determined to be invalid or unenforceable by a court of competent jurisdiction, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said part or provision or the remaining parts or provisions of this Consent Judgment.

26. **Miscellaneous Provisions.** MCI WorldCom shall not represent or imply that Plaintiff acquiesces or approves of MCI WorldCom's past business practices, current efforts to reform its practices, or any future practices which MCI WorldCom may adopt or consider adopting. Plaintiff's decision to settle this matter does not limit Plaintiff's ability to engage in any enforcement action directed to events occurring after the Effective Date and does not constitute approval or imply authorization for any past, present, or future business practice.

27. **Communications Regarding Compliance.** Within thirty (30) days of written request by the Plaintiff, MCI WorldCom shall provide the Plaintiff with records and documents as the Plaintiff shall from time to time consider necessary to ensure compliance with the Settlement Agreement and Release and this Consent Judgment entered pursuant to the Settlement Agreement and Release.

28. **Recommendation:** The parties and their respective counsel have read and understood the terms of this Consent Judgment and, believing them to be fair and equitable, recommend the Court approve this Consent Judgment.

29. **Waiver of Service:** MCI WorldCom expressly waives personal service of this Consent Judgment and agrees that it has actual notice of the terms, conditions, and entry of this Consent Judgment.

IN WITNESS WHEREOF, the Parties have set their hand to this Consent Judgment on the date set out below their respective signatures.

JEREMIAH W. (JAY) NIXON,
ATTORNEY GENERAL

MCI WORLDCOM Communications, Inc.

By: _____

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Inc.

Date: _____

WHEREFORE, the Court, having read the foregoing Consent Judgement executed by the parties, and being fully advised in the premises, hereby orders, adjudges and decrees that the Consent Judgment be and hereby is entered and approved.

Circuit Judge

Date